

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN BILL THOMAS**, on January 22, 2001 at 3:00 P.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Bill Thomas, Chairman (R)  
Rep. Roy Brown, Vice Chairman (R)  
Rep. Trudi Schmidt, Vice Chairman (D)  
Rep. Tom Dell (D)  
Rep. John Esp (R)  
Rep. Tom Facey (D)  
Rep. Daniel Fuchs (R)  
Rep. Dennis Himmelberger (R)  
Rep. Larry Jent (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Clarice Schrumpf (R)  
Rep. James Whitaker (R)

**Members Excused:** Rep. Michelle Lee (D)  
Rep. Jim Shockley (R)

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 316, HJ 1, 1/19/2001  
Executive Action: HJ 1, HB 175, HB 81, HB 316

**HEARING ON HB 316**

**Sponsor:** REP. DAVE GALLIK, HD 52, Helena

**Proponents:** None

**Opponents:** None

**Opening Statement by Sponsor:**

REP. DAVE GALLIK, HD 52, Helena, said that HB 316 is fairly simple and straightforward. The only change in law that is proposed is to add the word "substantial," as shown on page 1, line 15 of the bill. This goes to the amendment of a parenting plan. At this point in time it is law there only need be a change in circumstances to bring back before the court or before the mediator or both, a request to change the parenting plan. This suggested change would require that to be a substantial change rather than just any old change. This has been requested by several of our district court judge and several of the practitioners in the family law area.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Informational Testimony:** None

**Closing by Sponsor:**

Rep. Dave Gallik said this is one of those amendments to the law that just makes sense. It's going to save a lot of time in our judicial system; it's going to help free up case loads and time frames; and it's also going to make potential litigants understand that they can't just come running back to the courthouse with any little change that they may find and try to amend a parenting plan; and he would urge a do pass.

**Questions from Committee Members and Responses:**

Rep. Facey asked Rep. Gallik if substantial was defined somewhere in the law. Rep. Gallik said that substantial, pursuant to the method by which it is used in this particular statute, is not defined, to his knowledge. Rather it's left to the discretion of the judge in a case by case basis.

Rep. Esp asked if the intent of this bill is to limit access to the courts of families that are attempting to get redress for some problem. Rep. Gallik said you could look at it that way, but he

would rather look at it as defining what is necessary to gain access. There have been some litigants who have come back that were just flat unhappy with the parenting plan, and any little tiny thing that they can see that may be a change, they'll run back to the courthouse and say, we've got to change. Most judges and family law practitioners that he had talked to think it makes some sense to require that at least there be a change that is substantial. So, yes, it would limit access to those who don't have a substantial change in their circumstances to amend the parenting plan. **Rep. Esp** asked if **Rep. Gallik** would be amenable to attempt to define substantial as an amendment. **Rep. Gallik** said he would be amenable, but it would be very difficult to define substantial statutorily, because it is one of those things that may be different, depending upon the circumstances. Substantial is defined by a case law, depending upon the specific circumstances that one finds themselves in, and a definition would have to be used that would meet the criteria for all parties and their individual cases.

**Rep. Facey** asked **Rep. Gallik** if this bill was his idea or if someone had requested it. **Rep. Gallik** said it was not his idea, however, he agrees with the idea, which was brought to him by some local district court judges and local family law lawyers.

**Rep. Jent** asked **Rep. Gallik** if it is true that because the word substantial is not in there now that there are a number of cases in the First Judicial District where parents have brought serial petitions to modify, just because there was a minor change in their status. **Rep. Gallik** said that is the reason why this bill is being brought before the legislature. There are some litigants that any time there is a small change, under law now they would be able to bring it back without it being frivolous in nature. The word substantial adds a little bit of a burden to make sure that when there is a change, it makes some sense to bring it back before the courts to look at it to see whether or not that change would warrant a modification of the parenting plan.

**Rep. Jent** asked if a parent had a parenting plan, which is a plan that defines the duties of either parent in the divorce decree and the terms of child custody and so forth, and the parent got a job in another state, would that be a substantial change. **Rep. Gallik** said yes. **Rep. Jent** asked if a parent had some sort of minor change that wasn't considered by the court, such as a small increase in pay or a slight change in their working schedule, would they not be able to bring the same petition. **Rep. Gallik** said in most circumstances that would be the case. That would be left to the discretion of the judge. **Rep. Jent** asked if the word substantial would ultimately be defined by the case law under this bill rather than the legislature trying to reach a laundry list of what is or isn't a substantial change. **Rep. Gallik** said that is a fair

statement. To try to define the word substantial for all matters statutorily would be almost impossible, but rather in specific circumstances by way of case law that has developed through the years in Montana, the word substantial has, in fact, got some definition.

**Rep. Raser** said that she agrees with the idea of this but is troubled by the word substantial because it's not defined, and she asked the sponsor for examples of cases that would be considered not substantial. **Rep. Gallik** said he is aware of a couple of cases that were not substantial, one of which had a minor change in the work week of one of the individuals and another involving a change in that one of the litigant's automobiles was going to be in the shop for awhile. When the courts look to whether or not to amend the parenting plan, if you'll look at the existing law, they always go back to what is in the best interests of the child.

**Closing by Sponsor:**

**Rep. Gallik** closed again by stating that this has been brought by judges and lawyers who practice in the family law area. They are the ones who deal with it every day, see the backlog, and see the frivolous information and requests that come before the court to try to change something that the parties just don't like. This would limit that, and that's appropriate for our state to do, and he urged a do pass.

**HEARING ON HJ 1**

**Sponsor:** REP. MATT McCANN, HD 92, Harlem

**Proponents:** Jim Jacobsen, Admin., Mt. Veterans' Affairs Division  
Hal Manson, American Legion of Montana  
Dan Antonietti, State Leg. Chrm., V. F. W.  
Gloria Paladichuk, Helena  
Kathy McGowan, Mt. Community Mental Health Centers  
Al Davis, Mental Health Assn. of Mt.  
Randy Poulsen, Chief, Mental Health Serv. Bur., DPHHS  
Bonnie Adee, Mental Health Ombudsman for Montana  
Joan-Nell Macfadden, M. H. Oversight Adv. Council

**Opponents:** None

**Opening Statement by Sponsor:** REP. MATT McCANN, HD 92, Harlem, said that House Joint Resolution 1 was forwarded out from the Finance Committee. Its purpose is to create an interim committee to monitor mental health care in Montana during the interim, which he believes

is a necessary interim endeavor. The membership of the committee is described on page 2, lines 2 through 6.

**Proponents' Testimony:**

**Jim Jacobsen, Administrator, Mt. Veterans' Affairs Division,** is responsible for 90,000 veterans, 155,000 family members, eight statewide offices and the state veterans' cemetery program. The interim Veterans' Affairs Committee did deal with a lot of veterans' health care issues. Veterans' health care is a federal V.A. function, and he is the conduit for the veteran and family members to access that health care. Mental health is one of the primary concerns. The resolution talks about the study of the structure and financing of mental health services that are available to veterans, and that's extremely important. He would envision the federal V.A. at Fort Harrison being in front of this suggested committee to discuss and lay out what it is that they do for veterans in the area of mental health care and how that dovetails into the services provided by the State of Montana. He supports this resolution on behalf of the 90,000 veterans across the state.

**Hal Manson, American Legion of Montana,** said that we do need a good hand on what happens to veterans' health in Montana. Although the U. S. Veterans' Administration is really in charge of this, a lot of it can back into the state system, so at this time we very strongly recommend that a study be made.

**Dan Antonietti, State Legislative Chairman, Veterans of Foreign Wars,** serves on the VFW national legislative committee. One of their national priorities is to appropriate and authorize adequate funds to the V. A. to disburse and operate what they have to do. They strongly support this resolution.

**Gloria Paladichuk, Helena,** supports the resolution. She has a sister who suffers from mental illness. The illness, treatment and funding are very complex, and this study is needed.

**Kathy McGowan, Mt. Community Mental Health Centers,** said that they support this continued study of mental health. Mental health is a very complex issue with a huge price tag. It is well worth the time that we all put in on it to try to bring that under control, get better understanding and have a number one, top mental health system in the state of Montana.

**Al Davis, Mental Health Assn. of Mt.,** said the association strongly supports this legislation. With the changes proposed by the human services subcommittee, it's extremely important that a diversified group of individuals maintain a careful oversight as to what the

result of those moves are. The association noticed that the Dept. of Corrections was not mentioned in the membership of the committee, and they feel that department has a very important piece of maintaining the oversight.

**Randy Poulsen, Chief, Mental Health Services Bureau, DPHHS**, said that over the interim, the HJR 35 committee served a useful purpose for the legislature, for DPHHS and for a lot of people concerned with mental health services throughout Montana. We all learned a lot from that study, and this proposed committee would be equally, if not more, useful. The Department would find this to be a very useful endeavor and urges a do pass.

**Bonnie Adee, Mental Health Ombudsman for Montana**, regularly attended the HJR 35 subcommittee on mental health, which was very successful in meeting its stated goal. Three pieces of legislation this session directly came from the work of that subcommittee. Persons who participated on the committee, who attended its meetings, and who read the press reports were provided with a greater understanding of the mental health system.

**Joan-Nell MacFadden, Great Falls, Mental Health Oversight Advisory Council**, who is also a board member of the Mt. Mental Health Assn. and chair of the Gt. Falls Mental Health Advisory Council, supports continued study through HJ 1. The committee has done a wonderful job in looking at services after managed care and the coordination of service and funding. Since the problems continue to plague us, she supports the continuance of the committee.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**Rep. Facey** said that in the interim committee on which he previously served there were several times when they worked that they referred to their resolution, saying "our resolution asked us to do this or that." He asked **Bonnie Adee** if she could think of anything now or in the next week or so where we need to include this resolution so the interim committee will have the authority to look at something. **Ms. Adee** said if she understood the question correctly, he was asking if there may be some topics missing from the defined study, and **Rep. Facey** said yes. **Ms. Adee** said from her perspective, there are some issues particular to children and the children's mental health system that aren't excluded but also aren't specified. The realm of children's mental health is more complex and in some ways more difficult to address and may warrant some particular study.

**Closing by Sponsor:**

**Rep. McCann** said that he first became informed about the area of mental health when he came into the legislature in 1995. Prior to that time, Montana had a fee for contract services, then went to a managed care contract, and now is back to a fee for contract and is looking at doing something that he doesn't quite understand yet, a regional system of care management. Without an interim study of continually being involved and keeping up with the needs of the people and the available resources, there's no way that we can address this issue for the good of the people who typically never come and testify, the patients themselves. He urges the committee to send this resolution out.

**EXECUTIVE ACTION ON HJ 1**

**Motion/Vote:** **Motion:** **REP. RASER** moved that **HJ1 DO PASS.**

**Motion/Vote:** **REP. RASER** moved that **HJ 1 DO PASS AS AMENDED.** **Motion passed unanimously.**

**EXECUTIVE ACTION ON HB 175**

**Motion/Vote:** **REP. JENT** moved **HB 175** do pass. **Motion carried 17-1 with Brown voting no.**

**Discussion:** **Rep. Jent** said the bill addresses a conflict between two existing statutes. The statute on health care information privacy does not contain an exception for a coroner's subpoena. Title 50 contains a section that says that basically health care information may not be disclosed by a health care provider pursuant to a compulsory legal process unless you have some of those exceptions. The issue was whether a coroner's subpoena amounts to such an exception. The law is silent on that, and this is a statute that says it is such an exception. That's why it is an addition to 50-16-530.

**Rep. Esp** asked **Rep. Jent** if the coroner's report is a matter of public record. **Rep. Jent** said the death certificate is, but the coroner's report is not necessarily public record. In criminal cases, it is generally considered confidential criminal information which may only be released upon the order of the court. **Rep. Esp** asked about the case referred to during the hearing regarding a patient who had died of AIDS and whether that would be public information, whether found out through medical records or through an autopsy. **Rep. Jent** said that is correct.

**Rep. Brown** said he was worried about the family that did not want the cause of death on the death certificate and is concerned about their privacy and the intent of the decedent regarding privacy about the cause of death. He wondered if he should be concerned.

**Rep. Jent** said it is a legitimate concern, which is why the legislature enacted 50-16-530. It is public policy in this state to not disclose health care records of any kind without certain noted exceptions. The coroner is charged under the law to determine the cause of death and must put it on the death certificate. This bill will make it easier to determine the correct cause of death, and therefore may make it easier to determine a cause of death that people may not want to reveal. But the coroner can determine cause of death by examination, medical records, laboratory testing or by an autopsy. The crucial trade-off is, should the coroner be forced in certain instances to do the autopsy because he can't get the medical records. That is the ultimate reason for this bill.

**Rep. Facey** asked if a coroner could request a district court judge to subpoena these medical records. **Rep. Jent** said the coroner could request a criminal investigative subpoena under 46-4-301 if the coroner was a law enforcement office, but some aren't. That's part of the gray area this bill seeks to cover. There is no fiscal note for this bill, but **Rep. Jent** said there could be potential savings for litigation expense as well as for autopsy and transportation costs.

**Motion/Vote:** Question was called. The **DO PASS** motion on **HB 175** carried 17-1 with **Brown** voting no.

#### **EXECUTIVE ACTION ON HB 81**

**Motion:** **REP. NOENNIG** moved that **HB 81 DO PASS**.

**Motion/Vote:** **REP. FACEY** moved that **HB 81 BE AMENDED**. Motion carried 18-0. **EXHIBIT** (huh17a01)

**Motion/Vote:** **REP. JENT** moved that **HB 81 AS AMENDED DO PASS**.

**Discussion:** **Rep. Jent** said he thinks this bill, which calls for mandatory testing for every student between grades 6 and 12, is unconstitutional. He referred to the January 8, 2001 issue of the Mt. School Boards' Assn. letter, which discussed a case recently decided in Indiana that struck down under the state constitution a policy requiring all students to consent to random testing as a prerequisite for engaging in extracurricular activities. The Indiana state constitution proposed a more stringent standard, that is, it's tougher on the state when the state wants to do something to an individual, and that is exactly how the Mt. Supreme Court has interpreted our constitution. The cases that were upheld by the



courts dealt with random testing. If this bill passes, it requires mandatory testing, not just of high school kids but of middle school students. Cost issues regarding this bill have been adequately addressed by others who testified. His basic teenager law philosophy is, "trust 'em, love 'em, lead 'em by example, but try to leave 'em alone if they're minding their own business." If local school folks want to do this, let them. This is a matter of privacy and respecting young people, and he opposes the bill.

**Rep. Newman** said that his real concern is that in Montana, our constitutional right of privacy is much more strict than our Fourth Amendment protection. He doesn't think this bill would pass without a challenge and there is a real serious constitutional concern about it. The cost element involved with this legislation could be enormous. He opposes the bill.

**Rep. Ripley** said he thought everybody knew how they're going to vote on the bill, and he called for the question. **Rep. Whitaker** said he had some testimony from a superintendent in Great Falls regarding costs, who said if he tested 9,025 students in grades 6 through 12, his figures would be about \$361,000. If he did just athletics, it would cost about \$179,000. He felt the money would be better spent on student instruction.

**Rep. Noennig** said this was a well-meaning bill and brought attention to a problem that needs attention. It has three major problems: it is probably unconstitutional, the local control issue, and the financing.

**Motion/Vote:** **REP. NOENNIG** moved that **HB 81 BE TABLED**. Motion carried 14-4 with Chairman Thomas, Himmelberger, Newman and Ripley voting no.

#### **EXECUTIVE ACTION ON HB 316**

**Motion:** **REP. JENT** moved that **HB 316 DO PASS**.

**Discussion:** **Rep. Noennig** asked for a brief explanation of the bill. **Rep. Jent** said that local district judge Dorothy McCarter had proposed the bill. District judges sit on divorce cases, including modification of parenting plans. The bill came about because people would frequently go in for changes to the parenting plans that were less than substantial. The word "substantial," modifying the word "change," ought to be enough that the judge could dismiss their motion to change the parenting plan if it was for a frivolous reason. The bill's sponsor had felt that the word "substantial" would be interpreted by case law rather than trying to amend the bill and try to define it.

**Rep. Esp.** said he was uncomfortable in injecting another barrier between families trying to work things out in court. **Rep. Noennig** said that the code was changed substantially a couple of sessions ago, and the philosophy was to consider the best interests of the child. He was concerned that this proposed change kind of shoots back the other way. After further discussion, **Rep. Jent** said he thought the Judiciary Committee might have been a more appropriate committee for this bill. **Rep. Brown** stated his concerns about how this would change the situation between parents and children and the courts, and how substantial "substantial" is.

**Rep. Newman** asked if there was a procedural mechanism for referring this bill to the Judiciary Committee. **Mr. Niss** said that the committee cannot refer a bill, but can request that the Speaker refer it.

**Substitute Motion/Vote:** **REP. NOENNIG** made a substitute motion that the committee POSTPONE ACTION on HB 316. Motion carried 11-6 with Facey, Whitaker, Esp, Fuchs, Raser and Ripley voting no.

**ADJOURNMENT**

Adjournment: 5:20 P.M.

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REP. BILL THOMAS, Chairman

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PATI O'REILLY, Secretary

BT/PO/JB

Jan Brown transcribed these minutes.

**EXHIBIT (huh17aad)**